

REMARKS

In the Office Action of December 19, 2006, claims 1-2, 4-8 and 10-22 were rejected under 35 USC §103(a) as being unpatentable over the Kessler U.S. Patent Application Publication No. 2001/0034618 in view of the De La Motte U.S. Patent Application Publication No. 2003/0014318 in further view of the “Partnering with School-Based Health Centers: Connecticut’s Medicaid Managed Care Experience” in view of Serko and in further view of Official Notice taken by the Examiner.

By the present response, the applicant has presented arguments for allowance over the combination of the four references cited by the Examiner, as well as in view of the Official Notice taken by the Examiner in rejecting the claims. Reconsideration of the claim rejections in view of the claim amendments, as well as in view of the arguments for allowance as set forth below, is respectfully requested.

Prior Art Summary

In the Office Action, the Examiner first relied upon the Kessler ‘618 application. The Examiner stated that the Kessler reference taught the step of submitting a request for a device from the healthcare facility to the third party payor for authorization of payment.

As discussed in the applicant’s prior response, Kessler teaches that a request for a device is submitted to the application service provider (ASP) 120 by a provider 104 (such as a healthcare facility). A database within the ASP determines whether the submitted request is authorized by the beneficiary’s insurance coverage. If the beneficiary is covered by the health plan, the provider 104 is informed that the medical benefit, product or service can be provided to the beneficiary. As stated in paragraph [0121] of the Kessler ‘618 reference, after receiving authorization, the provider 104 will provide the medical benefit and services to the beneficiary and will automatically bill the third payor 106. Thus, the Kessler ‘618 reference specifically teaches that the healthcare facility (provider 104) submits a bill directly to the third party payor.

Based upon this teaching in the Kessler ‘618 reference, there is no reason to include any other party in the billing and payment steps between the healthcare facility

(provider 104) and the third party payor. This type of payment and billing system was the common method of obtaining medical devices by a healthcare facility and is the specific type of procurement and billing system that was replaced by the method of the present application.

Next, the Examiner relied upon the De La Motte '318 publication specifically to show a transaction facilitator that contacts a manufacturing facility to order a device where the transaction facilitator generates a cost claim for the device. The applicant objects to such interpretation of the De La Motte reference by the Examiner in the Office Action.

The De La Motte '318 reference teaches in paragraph [0049] that "The buyer may access the database to create a purchase order. The transaction facilitator preferably transmits to the buyer a standardized purchase order which incorporates the terms and conditions agreed to by the parties. The buyer may then edit the purchase order as needed and send it to the supplier, either via the transaction facilitator or via mail, fax, etc."

Thus, in this section of the De La Motte '318 publication, the buyer receives a standard purchase order from the transaction facilitator, edits the purchase order and sends the purchase order directly from the buyer to the seller using standard transmission means. The purchase order received by the seller is directly from the buyer to the seller and requires payment from the buyer to the seller. In paragraph [0051], the De La Motte '318 publication specifically teaches that the buyer and/or supplier are able to save the typical mark-up applied when services are arranged by one or more intermediaries since the purchase order and payment are made directly between the buyer and the seller.

The next reference relied upon by the Examiner was a 1999 article referred to as "Partnering". This article discusses the role of managed care as a middle man between community providers, such as school-based health centers, and a state Medicaid agency. As described in the cited article, school-based health centers develop contracts with managed care programs such that the school-based health centers can receive payment for services from Medicaid through the managed care program of the state. In this way, the

school-based health centers can work through the managed care program to receive funding from Medicaid.

Claims 1-2, 4-6 and 21

Independent claim 1 requires a method of providing a device to a healthcare facility and obtaining payment for the device from a third party payor in which a transaction facilitator utilizes the request for the device from the healthcare facility to contact the manufacturer without involving the healthcare facility in the ordering or payment process. Once the request for the device has been authorized by the third party payor, the transaction facilitator, not the healthcare facility, contacts the device manufacturer to order the device without any communication between the healthcare facility and the manufacturer. Once the device has been delivered, the transaction facilitator bills the third party payor for the device without involving the healthcare facility in the billing process. After a cost claim for the device is generated from the transaction facilitator to the third party payor and the transaction facilitator receives payment from the third party payor, the payment is transferred from the transaction facilitator to the manufacturer for payment of the device.

As required by claim 1, the method clearly eliminates the requirement of the healthcare facility actually ordering the device from the manufacturer and removes the healthcare facility from the billing and payment cycle for the cost of the device. By utilizing a transaction facilitator to order and bill for the device, receive payment and deliver payment to the manufacturer, the method of claim 1 reduces the required function of the healthcare facility, thereby reducing the overall cost of the device and accelerating payment for the device to the manufacturer.

In rejecting claim 1, the Examiner correctly stated that the Kessler '618 reference taught the step of authorizing a procedure or the use of an orthopedic aid device based upon the insurance coverage of a beneficiary 12. However, the Kessler '618 reference clearly teaches in paragraph [0121] that the healthcare provider 104 immediately provides the medical benefits to the beneficiary and automatically bills the third party payor for the

healthcare provided to the beneficiary. The third party payor then automatically pays the provider 104. Thus, the Kessler '618 reference teaches directly away from the method of claim 1. Since the teaching of the Kessler '618 reference is directly away from the method of claim 1, the combination of the Kessler '618 reference with the De La Motte '318 reference is improper.

In further rejecting claim 1, the Examiner stated that the De La Motte '318 reference taught a step in which the transaction facilitator generates a cost claim (invoice) for the device and that the supplier delivers the device by hand delivery to the buyer. The Examiner stated that the De La Motte reference was able to automate the product purchasing process by electronically exchanging and supplying the necessary documentation, certifications and communication. The Examiner took the position that the step of receiving payment at the transaction facilitator for the claim from the third party payor and transferring the funds from the transaction facilitator to the manufacturer for payment of the device is within the scope of the function of the transaction facilitator contemplated by the De La Motte reference.

The applicant hereby strongly objects to such finding by the Examiner. In the De La Motte '318 reference, the reference only teaches that the transaction facilitator is able to generate a standard purchase order which is delivered to the buyer for editing (see [0049]). Once the buyer has edited the purchase order, the purchase order is sent directly to the supplier. Paragraph [0051] specifically teaches that the buyer and seller are able to save the typical mark-up applied when services are arranged by one or more intermediaries, as occurs in conventional trading systems. Thus, the system of the De La Motte '318 reference specifically teaches that the buyer and seller communicate directly to each other without the use of the transaction facilitator in the payment and billing process.

The De La Motte '318 reference teaches directly away from the steps required by independent claim 1; namely that the transaction facilitator generates a cost claim for the device from the transaction facilitator to the third party payor, receives payment at the

transaction facilitator and transfers funds from the transaction facilitator to the manufacturer without communication between the healthcare facility and the manufacturer and without billing the healthcare facility. Thus, both the De La Motte '318 publication and the Kessler '618 publication teach the direct billing between the buyer of the device and the supplier of the device. Thus, neither of the references provides the teaching required to render the subject matter of independent claim 1 obvious.

In the Office Action, the Examiner took the position, without any documented support, that the step of receiving payment at the transaction facilitator from a third party payor and transferring the funds from the transaction facilitator to the manufacturer is within the scope of the functions of the transaction facilitator contemplated by De La Motte. This finding is not supported by anything within the De La Motte '318 reference. Instead, the De La Motte '318 reference specifically teaches that the buyers and sellers communicate with each other directly through both the supply process and the billing process such that funds are transferred directly from the buyer to the seller without the typical mark-up associated with an intermediary. Thus, the De La Motte reference clearly teaches directly away from utilizing the transaction facilitator in the payment and billing process. The Examiner's assertion that this function would have been within the scope of the transaction facilitator is directly contrary to the express teaching of the De La Motte '318 reference.

In rejecting the claims, the Examiner also stated that in the combined system of Kessler and De La Motte, it would have been within the scope of the combined system to have relayed the request for the quote from the third party payor to the transaction facilitator since they are all connected by the network. The applicant hereby objects to such finding by the Examiner.

In making this finding, the Examiner mischaracterizes the teaching of the Kessler '618 reference. As stated in paragraph [0121], once the ASP determines that the beneficiary is covered by the health plan, the provider may then immediately provide the medical benefit products and services to the beneficiary and automatically bills the third

party payor for the healthcare provided to the beneficiary. The Kessler '618 reference teaches that once the procedure has been authorized, the provider takes the steps to carry out the medical procedure. The Kessler reference does not provide any teaching or suggestion of utilizing a transaction facilitator, as taught by the De La Motte '318 reference.

As the Examiner stated in the Office Action, the Kessler and De La Motte references do not teach that the transaction facilitator bill a third party payor without the transaction facilitator billing the healthcare facility. To show this feature, the Examiner cited the Partnering article. The Partnering article discusses the interaction between school health centers, which are referred to as community providers, and managed care programs that operate under the CHIP program taught by the reference. As the article suggests, in the past the community facilities could bill Medicaid directly for expenses incurred by patients who are covered by Medicaid. However, with the advent of mandatory managed care programs, the school health center is required to submit a claim to the managed care program, which in turn is contracted to Medicaid for payment. In such a system, the healthcare facility must still generate an invoice for payment to the managed care program.

The use of the managed care program as an intermediary between the community care facility and Medicaid does not teach or suggest the use of a transaction facilitator to bill a third party payor (Medicaid) without the transaction facilitator billing the healthcare facility. This interpretation of the teaching of the Partnering article is improper, since the Partnering article teaches that the healthcare facility bills the managed care, which in turn submits a bill to a third party payor (Medicaid). Thus, the healthcare facility is directly involved in the billing cycle, since the healthcare facility must first submit a bill to the managed care for payment by Medicaid. Thus, the Partnering article does not teach or suggest the removal of the healthcare facility from the billing cycle, as is required by independent claim 1.

To show the feature of a middle man, the Examiner cited the Serko abstract. However, the Serko abstract only states that a middle man buys from a manufacturer and sells to a U.S. importer. This abstract provides no teaching or suggestion of the function of the transaction facilitator required by independent claim 1.

Thus, the subject matter of the combined references cited by the Examiner does not teach or suggest, nor render obvious, the subject matter of independent claim 1. For these reasons, independent claim 1 is believed to be allowable over the combination of references cited by the Examiner.

Claims 2, 4-6 and 21 depend directly or indirectly from claim 1 and are thus believed to be allowable based upon the above arguments for allowance, as well as in view of the subject matter of each claim.

Claims 7-8, 10-12 and 22

Independent claim 7 has been rejected based upon the same combination of references discussed above in the arguments for allowability of independent claim 1. Like independent claim 1, claim 7 is directed to a method in which a transaction facilitator electronically contacts the manufacturer for a medical device to order the medical device without communication between the healthcare facility manufacturer. Further, claim 7 requires the manufacturer to delivery the medical device to the healthcare facility without billing the healthcare facility for the cost of the medical device. The transaction facilitator further generates a claim for the medical device to the insurance provider and receives payment for the claim from the insurance provider without involving the healthcare facility. Once the payment is received, the funds are transferred from the transaction facilitator to the device manufacturer, again without involving the healthcare facility.

For the same reasons as set forth above in the arguments for allowance of independent claim 1, the combination of the references cited by the Examiner do not teach or suggest, nor render obvious, the subject matter of independent claim 7. Thus,

independent claim 7 is believed to be in condition for allowance over the references cited by the Examiner.

Claims 8, 10-12 and 22 depend directly or indirectly from claim 7 and are believe to be allowable based upon the above arguments for allowance as well as in view of the subject matter of each claim.

Claims 13-20

Independent claim 13 is directed to a method of providing a device to a healthcare facility for use with a patient, where the cost is covered by a third party payor. As required by claim 13, electronic authorization from the third party payor is provided to the healthcare facility for the proposed treatment. Upon authorization, the request for the preferred device is relayed from the third party payor to the transaction facilitator. The transaction facilitator contacts the manufacturer for the device to order the device where the manufacturer delivers the device directly to the healthcare facility without ever billing the healthcare facility. Upon delivery of the device, a claim for the device is generated from the transaction facilitator to the third party payor without ever generating a bill to the healthcare facility. In accordance with the method of claim 13, the device is provided to the healthcare facility after authorization without the manufacturer or the transaction facilitator ever billing the healthcare facility. Instead, the transaction facilitator generates a claim for the device directly to the third party payor without involving the healthcare facility.

As discussed above in the arguments for allowance of claim 1, this process removes the healthcare facility from the billing cycle, which both reduces the cost of the billing procedure as well as reduces the time physically required to complete the billing process.

In rejecting claim 13, the Examiner correctly stated that the Kessler reference failed to teach the step of relaying the request for a proposed treatment for a third party payor to a transaction facilitator and utilizing the transaction facilitator to contact the manufacturer for the device to order the device. For this feature, the Examiner relied

upon the De La Motte '318 reference. Specifically, the Examiner stated that it was the Examiner's position that the step of generating a claim for a device from the transaction facilitator to the third party payor without billing the healthcare facility was within the scope of the transaction facilitator taught by the De La Motte '318 reference. This finding by the Examiner is not based upon any teaching or suggestion within the De La Motte '318 reference. Instead, it is pure speculation by the Examiner as to the scope of the teaching provided by the De La Motte '318 specification.

The De La Motte '318 reference specifically states that the buyer generates a purchase order that is delivered directly to the supplier such that the buyer or supplier is able to save the typical mark-up applied when such services are arranged by one or more intermediaries. In accordance with the teaching of the De La Motte '318 reference, the buyer (healthcare facility) would bill the supplier (manufacturer) directly and issue a purchase order to the supplier (manufacturer). The use of any intermediary (transaction facilitator) is specifically taught away from in the De La Motte '318 reference (see paragraph [0051]).

In rejecting claim 13, the Examiner relied upon the Partnering article to show that a transaction facilitator can bill a third party payor without ever billing the healthcare facility. As discussed above in the arguments for allowance of independent claim 1, the Partnering reference does not teach this feature required by independent claim 13. Further, the Serko abstract cited by the Examiner only teaches that a middle man can buy from a manufacturer and resell a device to another party.

The Examiner's Official Notice with respect to this feature is directly contrary to the teaching of both the Kessler '618 publication and the De La Motte '318 reference cited by the Examiner. Since both of these references teach directly away from such feature, there would be no motivation to utilize the middle man taught by the Serko reference.

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Claims 14-19 depend directly or indirectly from claim 13 and are believed to be allowable based upon the above arguments for allowance, as well as in view of the subject matter of each claim.

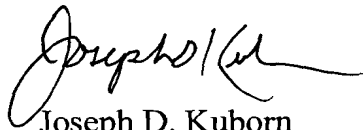
Conclusion

Based upon the above claim amendments and the above arguments for allowance, claims 1-2, 4-8 and 10-22 are believed to be in condition for allowance and such action is respectfully requested.

The Examiner is invited to contact the applicant's undersigned attorney with any questions or comments, or to otherwise facilitate prosecution of the present application.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Joseph D. Kuborn', with a stylized flourish at the end.

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